

The opinion in support of the decision being entered today was **not** written for publication and is **not** binding precedent of the Board.

Paper No. 29

UNITED STATES PATENT AND TRADEMARK OFFICE

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**PAT. & T.M. OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES**

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DAVID J. BOOTHBY

Appeal No. 2002-1905
Application No. 09/240,563

ON BRIEF

Before HAIRSTON, DIXON, and LEVY, Administrative Patent Judges.
HAIRSTON, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 22 through 27:

The disclosed invention relates to a data processing method for synchronizing the data records of a plurality of disparate databases.

Claim 22 is illustrative of the claimed invention, and it reads as follows:

Appeal No. 2002-1905
Application No. 09/240,563

22. A data processing method for synchronizing the data records of a plurality of disparate databases, the method comprising the steps of:

providing a status file containing data records reflecting the contents of data records existing in at least one of the disparate databases at the time of a prior synchronization;

comparing data records from at least one of a first and a second of the plurality of databases to corresponding data records of the status file to determine whether data records of the database have changed or been deleted since the prior synchronization or whether there are new data records since the earlier synchronization;

updating the first and second databases based on the outcome of the comparing step; and

updating the status file so that its data records reflect the contents of the data records after they have been updated,

wherein the data records of the first and the second databases are without unique identification codes.

The reference relied on by the examiner is:

Boothby	5,684,990	Nov. 4, 1997
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Claims 22 through 27 stand rejected under the judicially created doctrine of obviousness-type double patenting over claims 1, 6, 7, 9, 17 through 19, 21 and 22 of Boothby.

Reference is made to the final rejection (paper number 22), the brief (paper number 26) and the answer (paper number 27) for the respective positions of the appellant and the examiner.

Appeal No. 2002-1905
Application No. 09/240,563

OPINION

We have carefully considered the entire record before us, and we will sustain the obviousness-type double patenting rejection of claims 22 through 27.

Appellant argues (brief, pages 2 and 3) that it is unnecessary and inappropriate to require a terminal disclaimer because any patent issuing from this application will expire before Boothby as a result of new laws defining the terms of patents, and because In re Van Ornum, 686 F.2d 937, 214 USPQ 761 (CCPA 1982) is not binding precedent on the Federal Circuit.

In the first appeal to be heard and published by the newly created Court of Appeals for the Federal Circuit, the court sitting in banc considered what case law, if any, may appropriately serve as established precedent, and decided that "the holdings of our predecessor courts, the United States Court of Claims and the United States Court of Customs and Patent Appeals, announced by those courts before the close of business September 30, 1982, shall be binding as precedent in this court." South Corp. v. U.S., 690 F.2d 1368, 215 USPQ 657 (Fed. Cir. 1982). Notwithstanding the earlier termination date of any patent that may issue from this application, appellant's arguments fail to convince us that the

Appeal No. 2002-1905
Application No. 09/240,563

changes in the law supersede the terminal disclaimer requirements of Van Ornum.


In summary, the obviousness-type double patenting rejection of claims 22 through 27 is sustained.


DECISION

The decision of the examiner rejecting claims 22 through 27 under the judicially created doctrine of obviousness-type double patenting is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED


KENNETH W. HAIRSTON
Administrative Patent Judge


JOSEPH L. DIXON
Administrative Patent Judge


STUART S. LEVY
Administrative Patent Judge

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Appeal No. 2002-1905
Application No. 09/240,563

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